



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 2, 1998

Ms. Linda Cloud
Executive Director
Texas Lottery Commission
P.O. Box 16630
Austin, Texas 78761-6630

Letter Opinion No. 98-089

Re: Whether Government Code section 466.155(a)(4)(C) prohibits the Texas Lottery Commission from conducting promotional activities for the state lottery at events where alcoholic beverages are sold for on-premises consumption (RQ-1062)

Dear Ms. Cloud:

You ask whether Government Code section 466.155 (a)(4)(C) prohibits the Texas Lottery Commission (the "commission") from conducting promotional activities for the state lottery at events where alcoholic beverages are sold for on-premises consumption. Based on its language and purpose, we conclude that section 466.155(a)(4)(C) does not prohibit the commission from conducting promotional activities at such events if the promotional activities do not involve the sale of lottery tickets.

Your letter and a brief submitted by the commission provide the following background to your question:¹ While the commission does not contract with a person or entity that holds a permit for on-premises consumption of alcoholic beverages ("alcohol permit") or conduct promotional activities at locations where the sale of alcoholic beverages for on-premises consumption is the primary focus, it does conduct promotional activities at some events where alcoholic beverages are sold for on-premises consumption. For example, the commission conducts such activities at sporting events and festivals. At a sporting event, the sports arena or one of its tenants will hold an alcohol permit although the sports team with which the commission contracts does not. At a fair or festival, another entity leasing space there will have a temporary alcohol permit although the organization in charge of the event with which the commission contracts will not. The commission believes that its conduct of promotional activities at these events are in compliance with the Texas Lottery Act,

¹See Letter from Linda Cloud, Executive Director, Texas Lottery Commission, to Dan Morales, Attorney General of Texas (Dec. 30, 1997) and Brief from Texas Lottery Commission, to Dan Morales, Attorney General of Texas (on file with Opinion Committee).

which governs the commission and the lottery.² The state auditor, however, has questioned whether that statute allows the commission to conduct the promotional activities at events where alcoholic beverages are sold for on-premises consumption even though the commission does not contract for the promotional activities with those persons or entities holding alcohol permits.

The State Lottery Act, Government Code chapter 466 (the “act”), prohibits the commission’s executive director from awarding a contract for the purchase or lease of facilities, goods, or services related to lottery operations to a person who would be denied a license as a sales agent under section 466.155 of the act.³ That section requires the executive director to deny a sales agent license to an applicant that (1) has been convicted of a felony, criminal fraud, gambling or gambling-related activities, or a misdemeanor involving moral turpitude within a certain time period; (2) is or has been a professional gambler; (3) is currently delinquent in payment of state taxes; (4) is married to a person described in (1) through (3); (5) is an officer or employee of the commission or a lottery operator, or related thereto; or (6) is not an individual and has a certain business affiliation with an individual described in (1) through (5). *See* Gov’t Code § 466.155(a)(1)-(3). Additionally, the executive director must deny a license to an applicant who:

is a person whose location for the sales agency is:

(A) a location licensed for games of bingo under the Bingo Enabling Act (Article 179d, Vernon’s Texas Civil Statutes);

(B) on land that is owned by:

(i) this state; or

(ii) a political subdivision of this state and on which is located a public primary or secondary school, an institution of higher education, or an agency of the state; or

²You explain that it has been the commission’s policy to ensure that the lottery promotional activities do not coincide with the sale of alcoholic beverages for on-premises consumption. *See* Texas Lottery Commission Brief to Dan Morales, Attorney General of Texas at 3. In addition to not conducting promotional events at locations where the sale of alcohol beverages for on-premises consumption is the primary focus and not contracting with entities or persons that hold a permit for on-premises consumption, the commission attempts to distance the lottery promotional booth from areas at the same event where alcohol is served for on-premises consumption. *Id.* at 3-5. The commission also has guidelines with respect to the display of the lottery logo. Specifically, the logo may not be used in connection with any advertisement for an alcoholic beverage. *Id.* at 3.

³*See* Gov’t Code §§ 466.014(b) (“A person with whom the executive director contracts to operate a lottery must be eligible for a sales agent license under Section 466.155.”), .103 (“The executive director may not award a contract for the purchase or lease of facilities, goods, or services related to lottery operations to a person who would be denied a license as a sales agent under Section 466.155.”).

(C) a location for which a person holds a wine and beer retailer's permit, mixed beverage permit, mixed beverage late hours permit, private club registration permit, or private club late hours permit issued under Chapter 25, 28, 29, 32, or 33, Alcoholic Beverage Code; or

....

Gov't Code § 466.155(a)(4) (emphasis added). As the commission points out, all of the requirements of section 466.155, with the exception of subsection (a)(4), deal with the applicant's personal characteristics and can be readily applied to persons or entities other than lottery sales agents with which the commission contracts. Subsections (a)(4)(A) through (C), however, deal with an applicant's location "for the sales agency" and are more problematic. The location that the commission is specifically concerned with is that proscribed in subsection (C) "for which a person holds" an alcohol permit for on-premises consumption as well as for the sale of alcoholic beverages.⁴ Your question requires us to construe section 466.155(a)(4)(C).

Section 466.155(a)(4)(C) by its plain terms applies to the sale of lottery tickets at locations where alcoholic beverages are sold for on-premises consumption. Under subsection (a)(4)(C), the executive director must deny an applicant a sales agent license if the applicant is a "person whose location for the *sales agency* is . . . a location for which a person holds a wine and beer retailer's permit, mixed beverage permit . . ." *Id.* "Sales agent" or "sales agency" is "a person licensed under this chapter to sell tickets." *Id.* § 466.002(9). "Ticket" is defined as "any tangible evidence issued to provide participation in a lottery game authorized by this chapter." *Id.* § 466.002(10). Thus, "sales agency" involves the sale of lottery tickets. No other provision in the act extends "sales agency" to cover activities other than the sale of lottery tickets. Therefore, subsection (4)(C) is inapplicable to activities for which the commission contracts⁵ unless the activities involve the sale of lottery tickets.

This construction is completely consistent with the legislative purpose of section 466.155(a)(4)(C) to limit the locations at which lottery tickets are sold to those that do not sell alcoholic beverages for on-premises consumption. By adopting section 466.155(a)(4)(C), the legislature intended to protect individuals from expending all their funds to purchase lottery tickets while intoxicated. The substance of what is now subsection (a)(4)(C) was added to House Bill 54, which enacted the Texas Lottery Act, as an amendment upon the bill's second reading.⁶ Representative Repp, who offered the amendment, explained the purpose of the amendment as follows:

⁴See Alco. Bev. Code §§ 25.01 (wine and beer retailer's permit), 28.01 (mixed beverage permit), 29.01 (mixed beverages late hours permit), 32.01 (private club registration permit), 33.01 (private club late hours permit).

⁵See *supra* note 3.

⁶See H.J. OF TEX., 72d Leg., 1st C.S. 781; Debate on TEX. H.B. 54 on the Floor of the House, 72d Leg., 1st C.S. (August 6, 1991) (tape available through House Video/Audio Services Office).

Mr. Speaker, members, what the amendment does is, it would limit the locations where lottery tickets may be sold—where the tickets may be sold—to places that did not have a on-premises alcoholic beverage permit. In other words, if a place had sold beverages for on-premises, they could not also sell lottery tickets. The reason being is that I don't think we want people who are sitting around drinking on premises and being intoxicated and spending all their money on lottery tickets while intoxicated.⁷

Thus the reason for the section 466.155(a)(4) prohibition does not exist if lottery tickets are not available for purchase. Although individuals may become intoxicated at locations where alcohol is sold for on-premises consumption, there are no lottery tickets to spend all their money on while intoxicated.

Based on the foregoing, we conclude that section 466.155(a)(4)(C) does not apply to locations where no lottery tickets are sold. It follows that if promotional activities at events at which alcoholic beverages are sold for on-premises consumption do not include the sale of lottery tickets, the statute is inapplicable. Accordingly, section 466.155(a)(4)(C) does not prohibit the commission from conducting promotional activities at such events unless the promotional activities involve the sale of lottery tickets.⁸ You do not specifically advise us whether the promotional activities at issue include the sale of lottery tickets.⁹ Because this office does not make factual findings,¹⁰ we cannot determine whether subsection (a)(4)(C) prohibits the commission from conducting these activities at events where alcoholic beverages are sold for on-premises consumption.

⁷Debate on TEX. H.B. 54 on the Floor of the House, 72d Leg., 1st C.S. (August 6, 1991) (tape available through House Video/Audio Services Office). The substance of section 466.155 was made applicable to all contracting entities by the Senate Finance Committee Substitute for House Bill 54 passed by both the house and the senate. See C.S.H.B. 54, 72d Leg., 1st C.S., §§ 2.04(b), 3.02(a)(4)(D); H.J. OF TEX., 72d Leg., 1st C.S. 781.

⁸Given our conclusion, we do not address the commission's assumption that section 466.155(a)(4)(C) applies only to the party with which the commission contracts *i.e.*, the contracting party itself may not hold an alcohol permit.

⁹Although the commission's brief suggests that lottery tickets are not sold at the promotional events, it does not specifically state that.

¹⁰See *e.g.*, Attorney General Opinions DM-383 (1996) at 2 (questions of fact are inappropriate for opinion process), DM-98 (1992) at 3 (questions of fact cannot be resolved in opinion process), H-56 (1973) at 3 (improper for attorney general to pass judgment on matter that would be question for jury determination), M-187 (1968) at 3 (attorney general cannot make factual findings).

S U M M A R Y

Government Code section 466.155(a)(4)(C) does not prohibit the Texas Lottery Commission from conducting promotional activities for the state lottery at events where alcoholic beverages are sold for on-premises consumption if the promotional activities do not involve the sale of lottery tickets.

Yours very truly,

A handwritten signature in cursive script that reads "Sheela Rai".

Sheela Rai
Assistant Attorney General
Opinion Committee